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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962.

No. 817

FRANCES O. WARRINER,
Petitioner,

vs.

HARRY FINK, IRVING POLLACK, MARCELLA POLLACK AND LOAN STAR, INC., Licensed and Organized to Do Business in the State of Florida, SAM KAY, MARILYN THAL, Formerly MARILYN KAY, and SIDNEY THAL, Each Individually and As Officers, Agents, Employees and Servants of Said Defendant Corporation, and All Jointly and Severally,
Respondents.

BRIEF IN RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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BRIEF IN RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

OPINIONS BELOW.

The opinion of the United States Court of Appeals for the Fifth Circuit, to which this Petition for Certiorari is directed is reported in 307 F.2d 933, and was rendered by said Court on September 13, 1962.

JURISDICTION.

The Petition for Writ of Certiorari was filed, in this Court, on February 8, 1963. The jurisdiction of the Supreme Court of the United States is apparently invoked under the provisions of 28 U.S.C., § 1254.

QUESTIONS PRESENTED.

I.

Does the decision of the United States Court of Appeals, rendered herein, conflict with any other decision so as to warrant further review by this Court?

II.

Does a Federal District Court have jurisdiction to review, vacate and set aside judgments of the Supreme Court of Florida where no timely and appropriate appeal to the United States Supreme Court was taken?

STATEMENT OF THE CASE.

The Petitioner, Frances O. Warriner, on November 30, 1960, instituted suit in the United States District Court seeking a review of "* * * all orders, rulings, decrees, and all other deeds, conveyances entered in this certain suit in the Circuit Court of the Eleventh and/or Sixteenth Judicial Circuit, in and for Monroe County, Florida, In Chancery, Case No. 12516 * * *". In her prayers for relief petitioner-plaintiff asked the District Court for injunctive relief against the respondents herein to prevent their right to lawful enjoyment of the final judgments rendered by

the trial courts, and affirmed by the appellate courts of the State of Florida in Case No. 12,516.

The orders petitioner complains of arose out of a complaint orginally filed by the defendant, Harry Fink, against Mrs. Warriner in Monroe County Circuit Court October 26, 1950, whereby Mr. Fink sought to foreclose the mortgage posted by the petitioner as collateral security for a loan.

The chronology of events in this controversy is:

Oct. 26, 1950.	Mr. Fink filed suit to foreclose mortgage against Warriner.
Dec. 28, 1950.	Final Decree of Foreclosure.
Sept. 20, 1951.	Circuit Court Order denying Motion of Warriner to set aside Final Decree.
Nov. 10, 1951.	Warriner filed Notice of Appeal to Review Order of September 20, 1951.
Jan. 23, 1952.	Supreme Court of Florida dismissed Warriner's Appeal.
Jan. 29, 1952.	Cicuit Court Order Confirming Master's Sale.
Jan. 30, 1952.	Master's Deed recorded, conveying mortgage property to Appellee Fink.
Feb. 12, 1952.	Warriner filed new suit in Circuit Court in nature of Bill of Review.
June 25, 1952.	Circuit Court Order Denying Motion to Dismiss said new suit.
Jan. 20, 1953.	Supreme Court granted Certiorari Directing Dismissal of said new suit.
Apr. 7, 1952.	Warriner filed Motion in Circuit Court to Vacate Order Confirming Master's Sale dated January 29, 1952.
Sept. 18, 1953.	Circuit Court entered Order Denying Motion.
Oct. 6, 1953.	Warriner filed Petition for re-hearing addressed to Order of September 18, 1953.

Oct. 8, 1953.	Warriner filed Supplemental Petition for re-hearing addressed to Order dated September 18, 1953.
Sept. 9, 1954.	Circuit Court entered Order Denying said Petition and Supplemental Petition for re-hearing.
Sept. 28, 1954.	Warriner filed Notice of Appeal from Order dated September 9, 1954.
Jan. 5, 1955.	Supreme Court denied Warriner's Petition for Writ of Certiorari.
Nov. 26, 1955.	Warriner filed an original proceeding in the Supreme Court entitled "Application and/or Petition for Writ of Supervisory Control and/or Other Relief" brought against "Circuit Court of the Sixteenth Judicial Circuit in and for Monroe County, Florida, and Judge Aquilino Lopez, Jr. and Harry Fink".
May 31, 1956.	Supreme Court entered Order denying said application.
June 12, 1956.	Warriner filed Request for Determination En Banc of her petition for rehearing and for review on application and/or petition for Writ of Supervisory Control.
June 14, 1956.	Supreme Court entered its Order denying said application.
July 27, 1956.	Supreme Court denied Warriner's Petition for rehearing.
Sept. 18, 1956.	Supreme Court denied Warriner's Motion for Leave to file Extraordinary Motion for Petition for Rehearing and Review.
Oct. 25, 1956.	Warriner filed instant suit in Circuit Court in nature of Bill of Review.
Mar. 5, 1958.	Circuit Court entered its Order Dismissing Complaint with Prejudice.
Oct. 21, 1958.	District Court of Appeal quashed Warriner's Appeal from Circuit Court of Monroe County.

Nov. 5, 1958.	Warriner filed Petition for Rehearing.
Nov. 19, 1958.	District Court of Appeal denied Petition for rehearing.
Jan. 14, 1959.	Warriner filed Notice of Appeal to Supreme Court of Florida.
Mar. 4, 1959.	Supreme Court dismissed Warriner's Appeal.
Apr. 15, 1959.	Petition for rehearing denied by the Supreme Court.
Apr. 21, 1959.	Warriner filed in District Court of Appeal "Extraordinary petition for review and/or rehearing and/or clarification of opinion".
Apr. 23, 1959.	District Court denied Petition.
May 21, 1959.	District Court of Appeal denied the third Petition for Rehearing filed by Warriner and ordered, "That any further such unauthorized petitions for rehearing or similar pleadings if presented in the above styled cause shall be stricken upon presentation".
Oct. 7, 1959.	Supreme Court of Florida denied Warriner's petition to "vacate and set aside its opinion filed January 20, 1953".
Oct. 25, 1959.	Warriner filed Notice of Intention (In Supreme Court of Florida) to appeal to the Federal District Court of Appeal or the United States Supreme Court, alleging her constitutional rights had been invaded.
Nov. 2, 1959.	Interlocutory appeal filed by Warriner in the Supreme Court of Florida.
Dec. 16, 1959.	Supreme Court dismissed with prejudice purported interlocutory appeal.
Nov. 30, 1960.	Warriner filed Complaint in United States District Court for Southern District of Florida, seeking to vacate all of the foregoing orders, judgments and decrees (almost one year later).
Dec. 16, 1960.	Respondents defendants moved to dismiss the complaint on the ground that the Fed-

eral District Court had no jurisdiction to review and consider the orders, judgments and decrees of the trial and appelate courts of the State of Florida.

Feb. 28, 1961. The United States District Judge granted the Motion to Dismiss and entered an Order of Dismissal.

Apr. 7, 1961. Warriner filed Notice of Appeal, seeking review by the United States Court of Appeals of the Order of Dismissal.

Sept. 13, 1962. United States Court of Appeals Opinion affirming the judgment of the United States District Court.

Feb. 8, 1963. Petition for Writ of Certiorari to the United States Court of Appeals (in the Supreme Court of the United States).

ARGUMENT.

I.

Does the decision of the United States Court of Appeals, rendered herein, conflict with any other decision so as to warrant further review by this Court?

The judgment of the Circuit Court of Appeals, brought here for consideration upon a Petition for Certiorari, is not in conflict with any other reported decision so as to warrant further review of the case by this Honorable Court.

In its opinion, the Circuit Court (A1-7), 307 F.2d 933, held:

> "We are convinced, however, that when the plaintiff failed to seek review by the Supreme Court of the United States of the judgment of the Supreme Court of Florida of January 23, 1952 dismissing her appeal, she lost the only avenue of relief available to her in the federal courts. In the light of the anti-injunction

statute, 28 U.S.C.A., Sec. 2283, and of a number of decisions of the Supreme Court and of this and other Circuits, in which the principles are fully discussed, we hold that the federal district court had no jurisdiction to enjoin the enforcement of, or to set aside, or hold null and void the decree of foreclosure entered by the Circuit Court of Monroe County, Florida. See Rooker v. Fidelity Trust Co., 1923, 263 U.S. 413; Toucey v. New York Life Ins. Co., 1941, 341 U.S. 118; Chicago Life Ins. Co. v. Cherry, 1917, 244 U.S. 25, 30; Manufacturer's Record Publishing Co. v. Lauer, 5 Cir., 1959, 268 F.2d 187; T. Smith & Son, Inc., v. Williams, 5 Cir., 1960, 275 F.2d 397, 402 et seq.; Hanna v. Home Insurance Company, 5 Cir., 1960, 281 F.2d 298; Sexton v. Barry, 6 Cir., 1956, 233 F.2d 220; numerous cases collected in Annotation 13 A.L.R. 2d, pp. 467, et seq. Sec. 23. The judgment is therefore AFFIRMED."

The Court of Appeals acted properly in following well established law set forth in case decisions cited in their opinion, and referred to in more detail under point II of this brief. Careful examination of the authorities cited by petitioner in her brief in support of her Petition for Certiorari fail to reveal a single case authority in conflict with this opinion of the Fifth Circuit. The two cases upon which petitioner relies the most strongly to establish conflict are readily distinguishable on their facts. These two cases are *Johnson* v. *First National Bank*, 223 F.2d 31, and *Simon* v. *Southern Railway Co.*, 236 U.S. 115, 35 S. Ct. 255, 59 L. Ed. 492 (cited on pp. 32, 33, 35, 36, 47 and 48 of petitioner's brief).

In the Simon Case there was, first, diversity of citizenship between the parties (not present in the case at bar) and, secondly, no service of process on the defendant corporation. The State Court, therefore, had no jurisdiction over the defendant, Southern Railway, and, as the

Company made no appearance in the cause, the default judgment was void. The United States District Court properly concluded that the judgment, being void, gave no rights whatsoever to the plaintiff and the plaintiff could be enjoined by a Federal Court from attempting to enforce what was a judgment in name only, but in fact a nullity. The Court said:

> "On principle and authority, therefore, a judgment obtained in a suit of which the defendant had no notice was a nullity and the party against whom it was obtained was entitled to relief. It serves to illustrate the existence of appellee's right and the method of its enforcement to note that under the law of Louisiana the railway company was not obliged to attack a void judgment in the court that rendered it, but, in a court having jurisdiction of the plaintiff's person, could have instituted a new and independent proceeding to enjoin Simon from enforcing it."

In the case at bar, of course, Mrs. Warriner had full and ample notice of the impending mortgage foreclosure suit instituted in Monroe County, Florida, by the Respondent Fink and did in fact appear, answer, and participate. She was represented by counsel in that proceeding and vigorously asserted her rights over some thirteen years' extended litigation in both the State and Federal Court systems.

Petitioner, having failed to establish conflict between the decision of the Fifth Circuit Court of Appeals, and any other decision of the Supreme Court of the United States or another Circuit Court of Appeals, is not entitled to a second review of the Order of the District Court dismissing her complaint for lack of jurisdiction to try the case.

II.

Does a Federal District Court have jurisdiction to review, vacate and set aside judgments of the Supreme Court of Florida where no timely and appropriate appeal to the United States Supreme Court was taken?

The petitioner herein did not seek review of the adverse judgment of the Supreme Court of the State of Florida, rendered December 16, 1959, until approximately one year later (November 30, 1960), at which time she instituted these proceedings in the District Court of the Southern District of Florida. Her appropriate remedy, under the cases hereinafter cited, was to seek appellate review of the adverse decision of the Florida Supreme Court directly in the United States Supreme Court. 28 U.S.C., Sec. 1257, gives any citizen of the United States the right to such recourse, but petitioner's defalcation was in failing to seek appellate review within the time prescribed by the Code. A Petition for Certiorari to the United States Supreme Court to review an adverse decision of the Florida Supreme Court, filed approximately one year after the rendition of the adverse decision by the State Court, would be subject to a Motion to Dismiss or quash for lack of timely filing. Obviously then, a complaint filed in the United States District Court seeking the same review of the decision of the highest appellate tribunal in the State of Florida, is subject to dismissal upon the same ground.

There have been a number of recent decisions wherein the United States Supreme Court and certain Circuit Courts of Appeals have passed upon the jurisdiction of the Federal District Court to entertain suits seeking, as their ultimate relief, either (1) an injunction against State Court proceedings, or (2) the vacating of an opinion, decision or decree of a State Court.

On facts similar to those in the case at bar, the Courts have unanimously held the plaintiff must show a purposeful conspiracy to deny him due protection under the law, and not mere error or irregularity in the State Court proceeding. In *Rooker et al.* v. *Fidelity Trust Co.*, 463 U.S. 413, 44 S. Ct. 149, this Honorable Court said:

> "It affirmatively appears from the bill that the judgment was rendered in a cause wherein the circuit court had jurisdiction of both the subject-matter and the parties, that a full hearing was had therein, that the judgment was responsive to the issues, and that it was affirmed by the Supreme Court of the State on an appeal by the plaintiffs. 131 N.E. 769. If the constitutional questions stated in the bill actually arose in the cause, it was the province and duty of the State Courts to decide them; and their decision, whether right or wrong, was an exercise of jurisdiction. If the decision was wrong, that did not make the judgment void, but merely left it open to reversal or modification in an appropriate and timely appellate proceeding. Unless and until so reversed or modified, it would be an effective and conclusive adjudication. Elliott v. Peirsol, 1 Pet. 328, 340, 7 L. Ed. 164; Thompson v. Tolmie, 2 Pet. 157, 169, 7 L. Ed. 381; Voorhees v. Bank of United States, 10 Pet. 449, 474, 9 L. Ed. 490; Cornett v. Williams, 20 Wall. 226, 249; Ex parte Harding, 120 U.S. 782, 7 S. Ct. 780, 30 L. Ed. 824. Under the legislation of Congress, no court of the United States other than this court could entertain a proceeding to reverse or modify the judgment for errors of that character. Judicial Code, Sec. 237, as amended by Act September 6, 1916, c. 448, Sec. 2, 39 Stat. 726 (Comp. St. Sec. 1214). To do so would be an exercise of appellate jurisdiction. The jurisdiction possessed by the District Courts is strictly original. Judicial Code, Sec. 24 (Comp. St. Sec. 991). *Besides, the period within which a proceeding might be begun for the correction of errors such as are charged in the bill had expired before it was filed,* Act September 6, 1916, c.

448, Sec. 6, 39 Stat. 726 (Comp. St. Sec. 1228a), *and as is pointed out in Voorhees* v. *Bank of United States, supra, after that period elapses an aggrieved litigant cannot be permitted to do indirectly what he no longer can do directly.*" (Emphasis added)

The United States Court of Appeals of the Sixth Circuit was confronted with this identical problem in *Sexton* v. *Barry*, 233 F.2d 220, Certiorari denied 77 S. Ct. 94. There, the appellant Sexton sought an injunction against certain proceedings in the State Courts of Ohio. The United States District Judge dismissed the complaint and, in affirming the dismissal, the Court of Appeals held:

> "Moreover, it is the settled law that the District Court in the exercise of its equity powers will not review in an independent action orders entered by a State Court."
>
> * * *
>
> "What appellant asks is that this court order the District Court to relitigate the same issues which have now been finally disposed of by the Supreme Court of Ohio in a judgment binding on this court. As held by this court in General Exporting Co. v. Star Transfer Line, 6 Cir. 136 F.2d 329, 335, a Federal District Court will not function as a court of review for the State Court. The District Court there dismissed an action praying that proceedings in the State Court be declared null, void, and of no effect, and this court affirmed the decision of the District Court, stating:
>
> > 'The attempt to relitigate in federal courts issues already determined in state court proceedings has been disapproved in numerous opinions of United States Courts below the grade of the Supreme Court. Ritholz v. North Carolina State Board of Examiners in Optometry, D.C. N.C., 18 F. Supp. 409, 413 (three judge court); Davega-City Radio v. Boland, D.C. N.Y., 23 F. Supp. 969, 970 (three-judge

court); Hall v. Ames, 1 Cir., 190 Fed. 138, 140, 141; Furnald v. Glenn, 2 Cir., 64 Fed. 49, 54.'

Cf. Davega-City Radio, Inc., v. Boland, D.C. S.D. N.Y., 23 F. Supp. 969, 970, in which the court declared:

'There is also a further reason why the suit must be dismissed, namely, the principle that a decision of a state court may not be reviewed by bill in equity in a federal court. American Surety Co. v. Baldwin, 287 U.S. 156, 164, 53 S. Ct. 98, 100, 77 L. Ed. 231, 86 A.L.R. 298; Lynch v. International Banking Corp., 9 Cir., 31 F.2d 942, certiorari denied 280 U.S. 571, 50 S. Ct. 28, 74 L. Ed. 624; Furnald v. Glenn, 2 Cir., 64 Fed. 49, 54; Ritholz v. North Carolina State Board, D.C. M.D. N.C., 18 F. Supp. 409, 413. Here the plaintiff has presented to the state court the same questions as to the jurisdiction of the State Board that it wishes this Court to decide. The issue having been decided adversely to it, its remedy is appeal through the appropriate state courts and, if necessary, review by the Supreme Court of the United States. It cannot obtain a review by this independent suit in the federal court.'

See also H. J. Heinz Co. v. Owens, 9 Cir., 189 F.2d 505, 509.

"It is shown upon the face of this complaint that appellant regularly invoked the jurisdiction of the state court, the case was tried, judgment was rendered and eventually affirmed by the Supreme Court of Ohio. It is clear that appellant was not denied due process of law or the equal protection of the law under the Civil Rights Act, 42 U.S.C.A., Sec. 1981 et seq. This Act does not create an exception to the general principle that a decision of the state court may not be reviewed by bill in equity in a federal court. Davega-City Radio, Inc., v. Boland, supra; Bottone v. Lindsley, 10 Cir., 170 F.2d 705."

The Fifth Circuit Court of Appeals in *Manufacturers Record Publishing Company* v. *Lauer*, (1959) 268 F.2d 187, considered a case in which the plaintiff appellants sought to have the judgment of a Louisiana Supreme Court adjudged void and a party enjoined therein from executing judgment upon the ground that the judgment was a nullity. In affirming the action of the Federal District Court in dismissing the complaint the Court of Appeals, Hutcheson, Chief Judge, held that a decision of a State Court, having jurisdiction over the persons and subject matter, cannot be attacked in either a State or Federal Trial Court as being without binding force and effect in the absence of fraud, accident or mistake which deceives the Court into a wrong decree.

In the case at bar there is no contention made by petitioner that the Florida Courts lacked jurisdiction over the parties to the litigation and the subject matter. It is her contention, as is found by the Court of Appeals in the opinion here sought to be reviewed, "her argument is that the purported Final Decree of Foreclosure is an absolute nullity because of fraud practiced on the Court, and that a Federal District Court can enjoin a party from enforcement of such a void judgment under such authorities as *Simon* v. *Southern Railway Company*, (1915) 236 U.S. 115, and *Johnson* v. *First National Bank*, 10 Cir., 1955, 223 F.2d 31." Although finding that Mrs. Warriner had been represented by counsel throughout the State Court proceedings, the Circuit Court stated at page 5 of its opinion, "relying upon the fraudulent stipulation, the Court, on December 28, 1950, entered a Final Decree finding Mrs. Warriner's indebtedness under the mortgage to be $11,458.40, * * *".

The "fraudulent stipulation" referred to is a stipulation entered into between one Harold Kassewitz, Attorney for the plaintiff, Harry Fink, and an attorney named Cisco

(Mrs. Warriner's attorney), agreeing to the entry of a final decree upon the consideration that the defendant (Warriner) be given an extension of time prior to sale of the property within which to either pay the indebtedness, bid at the sale, or refinance her property (Opinion page 4). The execution of this stipulation was an arms-length transaction. Attorney Kassewitz entertained no fiduciary relationship to Mrs. Warriner or her attorney and it must be presumed that counsel for Mrs. Warriner knew and understood what he was doing in executing the stipulation. Assuming however, for the purpose of argument, that a conspiracy existed between the two lawyers to deprive Mrs. Warriner of her property; we are then asked to believe that the Circuit Court of Monroe County participated in the conspiracy by depriving the petitioner herein of her rights under the stipulation, namely, time within which to either pay the indebtedness, bid on the property, or refinance her loan. That the Court was no part to any alleged conspiracy is obvious by the facts as found in the record and set forth at page 5 of the opinion of the Fifth Circuit Court of Appeals. The Circuit Court of Monroe County, on September 20, 1951, set aside the sale and ordered a new sale for October 15, 1951. This was almost one year after the original entry of the final decree. Obviously, Mrs. Warriner got everything she was entitled to under the stipulation, namely, time within which to either pay the indebtedness, bid at the sale, or refinance her loan.

The Fifth Circuit then found from the record, at page 5 of its opinion, "the transcript of record was filed in the Supreme Court of Forida on January 10, 1952. Two days later Harry Fink, the appellee, filed a Motion to Dismiss the appeal in which he undertook to deceive the Court into ruling that the appeal was from the Decree of December 28, 1950, when in reality it was from the Order of September 20, 1951."

To ask this Honorable Tribunal to actually believe that the Justices of the Florida Supreme Court could be "deceived" into a misconstruction of the date of filing an appeal or of the type and date of order appealed from, surpasses credulity. It is categorically impossible to deceive the Supreme Court of Florida on the date of the filing of an appeal!" The assumption, therefore, must be that petitioner is suggesting that the Florida Supreme Court participated in this gigantic conspiracy to defraud her of her property and that their action in dismissing her appeal was a deliberate and calculated deprivation of her right to Due Process of Law. This is so patently ridiculous as to require no further comment. One need only look at the multitude of hearings accorded petitioner at all levels of the state judicial structure to see that she has had a full, complete and final determination of all matters raised in these proceedings. The Federal District Court was, therefore, eminently correct in dismissing her complaint in the original instance. The language of Chief Judge Hutcheson in the *Manufacturers Record Publishing Company* case *supra*, is particularly pertinent. It reads, at page 191, as follows:

> "The trouble with appellant's argument is that, without attacking the judgment for fraud or want of jurisdiction or alleging what the decision and judgment show to be the contrary, it assumes that it is not a judicial decision by the highest court of the state but a mere illegal fiating of persons having no jurisdiction or authority to act by which property, conceded to belong to one, is awarded to another. The fact, of which appellant seeks to make so much, that the three dissenters attack the decision and judgment as erroneous, is proof positive that the decision was a deliberate judicial act of the highest court of the state, in which, as it had a right to do, the court divided on the appropriate judgment to be entered. As the judgment

of that court, whatever force it might have as stare decisis or a guide to future decision, it cannot be attacked in either a state or a federal trial court as without binding force and effect.

In Hudson v. Lewis, 5 Cir., 188 F.2d 679, at page 684, this court said of a similar attack upon a judgment of a Supreme Court, there of Mississippi:

> 'Quite to the contrary of the pitifully subservient place in our judicial system accorded by appellants to State Courts by their claims under the facts, federal and state courts alike have spoken, they will continue to speak, without a dissentient note in one clear strain. This is to the effect that where a court, whether state or federal, acts within the competence of its jurisdiction, no other court may collaterally attack its judgment.
>
> 'In the case particularly relied on by appellants and cases similar to those, where collateral attacks succeeded, the precise, the definite, basis of their success was that the court whose judgment was under collateral attack had not proceeded with jurisdiction. In some of them it had not acquired jurisdiction of the person or subject matter affected by the decree. In others, though it had acquired jurisdiction ,it had, thereafter, and without the actual knowledge of the complaining person, proceeded in such manner as to deny him due process, that is, a fair and reasonable opportunity to be heard.
>
> 'In short, in some of these situations, the court had not, in respect of the matter complained of, acquired jurisdiction. In others, it had proceeded beyond the jurisdiction theretofore acquired.'

Cf. Ballard v. First National Bank, 5 Cir., 259 F.2d 681, and Drawdy Inv. Co. v. Leonard, 5 Cir., 261 F.2d 226.

"What and all that appellant could have hoped to do below or could hope here was to convince the court

that the decision of the Supreme Court of Louisiana was clearly contrary to the established jurisprudence of that state, and, because it was, it was a nullity and therefore subject to collateral attack in a federal court. The law is otherwise written in all the books."

In *Hanna* v. *Home Insurance Co.*, (1960) 281 F.2d 298, the Fifth Circuit, speaking through Judge Wisdom, held that a Federal District Court has no original jurisdiction to reverse or modify the judgment of a State Court and stated the issue in that case to be the question of whether Hanna stated a complaint for damages as a result of a conspiracy to deprive him of equal protection of the law. The Court said:

"He must show a purposeful conspiracy to deny him due protection; mere errors or irregularities in the State Court proceedings are not sufficient. Snowden v. Hughes, 1944, 321 U.S. 1, 64 S. Ct. 397, 88 L. Ed. 497. Nor does every denial of a right conferred by State law involve a denial of equal protection of law. (Cases cited) Merely characterizing defendant's conduct as conspiratorial or unlawful does not set out allegations upon which relief can be granted. (Cases cited)"

In the *Hanna* case, *supra*, the court was asked to believe that the entire state judicial structure of Texas was arraigned in a conspiracy against the plaintiff in the Federal District Court. In rejecting that contention the Fifth Circuit said:

"Here, the complaint characterizes the conduct of the defendant, court attaches, and certain Texas Judges as conspiratorial but does not set out allegations in support of that conclusion. For example, there is no allegation as to what Home Insurance did that was unlawful or improper. There is no contention that the insurance company improperly influenced any of the judges or court attaches. The one specific contention Hanna asserted—the charge that

the court reporter prepared a false record—he withdrew after a full hearing. There is nothing in the complaint showing a link, however frail, between Home Insurance Company and the other alleged conspirators. There is no attempt to connect any two of the alleged conspirators.

The complaint is a long lament for a cause that was killed by Texas courts. The appellant would have us infer that he could not have lost his case unless every judge and every court attache who had anything to do with the case conspired with the defendant insurance company to keep him from perfecting his appeal. But as we read the applicable Texas law and as the Court of Civil Appeals read the law, the court was 'powerless' to render any decision other than the 'regrettable' decision it did render."

In another Fifth Circuit decision, *T. Smith and Son, Inc.*, v. *Williams*, 275 F.2d 397 (1960), Judge Wisdom, again speaking of the court, held that the hands-off doctrine expressed in the anti injunction statute (28 U.S.C.A., Sec. 2283) must be considered in light of the function of that statute as a pillar of federalism, and the phrase "where necessary in aid of jurisdiction" contained in such statute should be interpreted narrowly, in direction of federal non-interference with orderly state proceedings.

CONCLUSION.

From the foregoing cited authorities, it is apparent that the affirmance, by the Fifth Circuit Court of Appeals, of the Order dismissing the complaint filed by petitioner in the United States District Court for the Southern District of Florida, is correct and the petition for writ of certiorari should therefore be denied.

The petitioner asks this Honorable Court to believe that the combined weight of the trial and appellate Courts of the State of Florida, formed a conspiracy with the respondents to deny her rights guaranteed by the Federal Constitution. The United States Constitution does not guarantee to any litigant the right to the *results* she wishes, merely that she be provided an appropriate forum within which to litigate her grievance.

Mrs. Warriner has litigated this case, and aired her grievance, in every court in the State of Florida from Key West to Tallahassee. If she is now, or was at the time of their rendition, dissatisfied with the nine orders or decisions of the Supreme Court of the State of Florida, her appropriate remedy was by way of petition for certiorari to this Honorable Court, and not to the District Court for the Southern District.

Dated at Miami Beach, Dade County, Florida, this 15th day of February, 1963.

SIBLEY, GRUSMARK, GIBLIN, KING & LEVENSON,
605 Lincoln Road,
Miami Beach, Florida,
Attorneys for Respondents,

By _____
JAMES LAWRENCE KING.

Certificate of Service.

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief of Respondents has been mailed to MRS. FRANCES WARRINER, 2663 S.W. 27th Street, Miami, Florida, this _____ day of February, 1963.

_____
JAMES LAWRENCE KING.